NO. 93845-8

**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CURTIS L. CORNWELL, APPELLANT

Appeal from the Superior Court of Pierce County No. 13-1-04618-2
The Honorable Jack J. Nevin

Court of Appeals No. 47444-1-II

SUPPLEMENTAL BRIEF OF THE STATE OF WASHINGTON

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did defendant fail to preserve his claim RCW 9.94A.631 requires a nexus between community custody violations and consequent searches when he failed to raise that claim of statutory error as a basis for suppression at trial?

2. Should the prevailing misinterpretation of RCW 9.94A.631 be corrected when it deviates from the statute's language and purpose by unduly restricting the ability of community corrections officers to prevent recidivism?

B. STATEMENT OF THE CASE.

Defendant was a recidivist felon under supervision on three cases when he fled from police to avoid arrest for a DOC warrant and had a cache of illegal drugs in his car. 1RP 85-87; Ex. 4. All of which violated conditions of his supervision.[1] CCO Grabski was summoned to the scene of defendant's arrest.[2] Grabski was briefed about the arrest, spoke with defendant and conducted a compliance search of defendant's car.[3] Grabski removed a "drug kit" and an array of incriminating items from the car that proved the drug offenses underlying defendant's convictions in this case.[4]

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[1] *Id.*; 1RP 11-13, 15-20,23, 33-34, 39-44, 48-49, 50, 58, 81, 95, 101-03, 110-14.
[2] 1RP 18, 39-40, 50, 62, 64-65.
[3] 1RP 16, 22, 25-27, 31-32-35, 37, 60, 65-66, 90, 93, 105-07, 116-17.
[4] 1RP 22, 24, 52-54, 90-93; 2RP 65, 74-77, 103-04, 142-45, 148-50.

Defendant never moved the trial court to suppress the recovered proof of his drug dealing based on a claim RCW 9.94A.631(1) required a nexus between the community custody violations and the car he fled from to avoid arrest. This Court granted review as to the search's lawfulness in response to a petition claiming the trial court should have suppressed the proof of defendant's drug dealing pursuant to the nexus test added to the statute by ***State v. Jardinez***, 184 Wn.App. 518, 338 P.3d 292 (2014).

C. ARGUMENT.

"The recidivism rate of probationers is significantly higher than the general crime rate." ***United States v. Knight***, 534 U.S. 112, 120, 122 S. Ct. 587 (2001). They "have [] more of an incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal[.]" *Id.* "As the recidivism rate demonstrates, most [of them] are ill prepared to handle the pressures of reintegration. [M]ost [] require intense supervision." ***Samson v. California***, 547 U.S. 843, 854-55, 126 S. Ct. 2193 (2006). RCW 9.94A.631 facilitates supervision by permitting rapid detection of a noncompliant offender's criminal activity. *See Id.*; ***United States v. Conway***, 122 F.3d 841, 842-43 (9th Cir. 1997); *see also* ***Griffin v. Wisconsin***, 483 U.S. 868, 875, 107 S. Ct. 3164 (1987).

1. DEFENDANT DID NOT PRESERVE HIS CLAIM THAT RCW 9.94A.631(1) REQUIRES A NEXUS BETWEEN SEARCH TRIGGERING OFFENSES AND SEARCHABLE OFFENDER PROPERTY.

An appeal's scope should be limited to the issues raised at trial. *See* ER 103(a)(1); RAP 2.5(a)(3); ***State v. O'Hara***, 167 Wn.2d 91, 98, 217 P.3d 756 (2010); ***State v. McFarland***, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995); ***State v. Guloy***, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985). Defendants are typically prohibited from switching theories of suppression on appeal. ***State v. Mak***, 105 Wn.2d 692, 718-19, 718 P.2d 407, *overruled on other grounds by*, ***State v. Hill***, 123 Wn.2d 641, 870 P.2d 313 (1994).

Defendant did not assert that RCW 9.94A.631(1) requires a nexus between community custody violations and compliance searches as a basis for suppression at trial. So, he should not be permitted to raise that theory of nonconstitutional error to attack an unfavorable ruling on appeal.

2. ALTHOUGH THERE WAS AMPLE PROOF OF NEXUS TO AUTHORIZE THE CHALLENGED SEARCH UNDER THE LOWER COURTS' MISINTERPRETATION OF RCW 9.94A.631(1) THAT ERROR SHOULD BE CORRECTED AS IT UNDULY RESTRICTS A REGULATORY TOOL OUR LEGISLATURE CRAFTED FOR CCOs TO COMBAT RECIDIVISM.

"The legislature has explicitly and broadly given [DOC] the power and responsibility to supervise offenders [] on various types of community custody." ***In re Personal Restraint of Dalluge***, 162 Wn.2d 814, 818, 177

P.3d 675 (2008). Offenders under supervision have diminished expectations of privacy, so DOC may search their property when it has reason to believe a condition of supervision has been violated. ***State v. Winterstein***, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009) (quoting RCW 9.94A.631 (1984)); ***State v. Campbell***, 103 Wn.2d 1, 22, 691 P.2d 929 (1984). This regulatory search authority was delegated to CCOs by RCW 9.94A.631(1). [5]

Whereas "suspicionless" searches are permitted under the Fourth Amendment. ***Samson***, 547 U.S. at 853. That lower standard serves the states' "overwhelming interest" in intensive systems of supervision. *Id.* at 853-54. The intrusion into offender privacy is reasonable since it enables states to effectively combat recidivism, which is the very premise behind supervision. *Id.* When successful, supervision protects the public while facilitating the rehabilitation most offenders need. *Id.* More protective "reasonable suspicion" standards can facilitate recidivism by enhancing the capacity of offenders to conceal misconduct. *See Id.*

Despite RCW 9.94A.631's already generous protection of offender privacy, ***Jardinez*** unduly added to it by restricting compliance searches to places where CCOs believe evidence of a search-triggering violation will be found. ***Jardinez***, 184 Wn.App. at. 530. That Division III nexus test was adopted by Division II. ***State v. Livingston***, 197 Wn.App. 590, 598, 389

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[5] *Id.* (Laws of Wash. 2012 1st sp.s. c 6 § 1; 2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195).

P.3d 753 (2017). The test defies the statute's language and purpose by needlessly making it more difficult to detect, interrupt and prevent recidivism.

a. RCW 9.94A.631(1)'s plain language cannot bear the nexus requirement read into it by the lower courts.

Statutory interpretation is reviewed *de novo*. ***State v. Jones***, 172 Wn.2d 236, 242, 257 P.3d 616 (2011). This Court "has [] a long history of restraint in compensating for legislative omissions." ***State v. Delgado***, 148 Wn.2d 723, 730, 63 P.3d 792 (2003). It "will not arrogate [itself] power to make legislative schemes more [] comprehensive[.]" *Id.* Where language is unambiguous there is no room for construction. ***State v. Daniel***, 17 Wash. 111, 114, 49 P. 243 (1897).

i. The lower courts found ambiguity in the statute where none exists.

Courts will not add clauses to unambiguous statutes. ***Delgado***, 148 Wn.2d at 727. They assume the Legislature meant what it said and apply the statute as written. *Id.*; ***Homestreet, Inc., v. State, Dep't of Revenue***, 166 Wn.2d 444, 451-52, 210 P.3d 297 (2009); ***State v. J.P.***, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); ***State v. Wilson***, 125 Wn.2d 212, 216-17, 883 P.2d 320 (1994). Adhering to the canon *expressio unius est exclusio*

alterius,[6] courts assume omitted language was intentionally excluded. ***Delgado***, 148 Wn.2d at 729; ***Maziar v. Washington State Dep't of Corr.***, 183 Wn.2d 84, 89, 349 P.3d 826 (2015). Statutes are not made ambiguous because differing interpretations are conceivable. ***Homestreet***, 166 Wn.2d at 451. Courts "should not strain for interpretations to create ambiguities where none exist." ***State Farm Mut. Auto. Ins. Co. v. Khoe***, 884 F.2d 401, 406 (9th Cir. 1989).

The plain language of RCW 9.94A.631(1)'s disputed text provides:

> [I]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

Id. Without analysis, Division III concluded:

> We cannot discern "plain meaning" in RCW 9.94A.631(1) for purposes of addressing the scope of any search. The language could be read to allow an unlimited scope of the search. The statute could be read to limit the search to areas or property about which the community corrections officer has reasonable cause to believe will provide incriminating evidence.

Jardinez, 184 Wn.App. at 526. In ***Livingston***, Division II:

> agree[d] with [] *Jardinez* [] that the phrase "has violated a condition or requirement of sentence" is ambiguous.

Livingston, 197 Wn.App. at 597. It justified resorting to the commentary ***Jardinez*** used as legislative history by stating:

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[6] To express one thing in a statute implies the exclusion of the other.

> [I]f the legislature had intended to allow any violation to justify a search of any property, the legislature could have referred to the violation of *any* condition or requirement, which it did not do.[7]

While addressing CCO search authority, this Court only noted the search-triggering requirement of reasonable cause to believe an offender violated a condition of sentence. ***Winterstein***, 167 Wn.2d at 629-30 (quoting RCW 9.94A.631 (1984)). The Ninth Circuit could not find a nexus requirement when it examined the statute:

> It does not matter whether the [CCOs] believed they would find evidence of Conway's address or contraband when they opened the shoe boxes. Washington law does not require [] the search be necessary to confirm the suspicion of impermissible activity, or that it cease once the suspicion has been confirmed.

United States v. Conway, 122 F.3d 841, 843 (9th Cir. 1997) (emphasis added); *see* ***State v. Parris***, 163 Wn.App. 110, 122, 259 P.3d 331 (2011).

That reading is well supported by the text. Courts account for ordinary meaning, grammar rules and statutory context when discerning what the Legislature has provided for in a statute. ***In re Forfeiture of One 1970 Chevrolet Chevelle***, 166 Wn.2d 834, 838-39, 215 P.3d 166 (2009). Starting with syntax, RCW 9.94A.631's search provision is a conditional sentence. It creates one causal relationship between a single "if" clause, which defines the triggering event of a reasonably suspected violation, and

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[7] *Id.* at fn.11.

a single "then" clause, which provides for consequent discretion to search offender property. *See* Oxford Dictionary of English Grammar, 2nd Ed. pg. 88-89 (2014). It does not imply a second conditional clause, such as:

> If there is reasonable cause to believe an offender violated a condition of sentence *and reason to believe evidence of the violation can be found in specific offender property*, [then] a CCO may search *the* property.

There is likewise no room for a second restrictive clause, like:

> CCOs may search offender property, *but only if there is reason to believe the property contains evidence of the violation under investigation.*

The statue links the reasonable-cause standard of proof to the violation in the conditional clause. There is no sound syntactic method of applying the standard across the comma to the main clause's description of searchable areas; much less, carrying it over with the violation to restrict the scope of searchable areas to places where evidence of a violation may be found.

Ambiguity is similarly absent from the statute's wording for none of it ambiguously suggests a nexus requirement's presence and absence. ***Health Ins. Pool v. Health Care Authority***, 129 Wn.2d 504, 508, 919 P.2d 62 (1996). ***Jardinez*** wrongly found ambiguity in the fact the Legislature did not explicitly exclude the nexus test ***Jardinez*** found outside the text. But the statute unambiguously defines triggering conduct and consequent discretion to search. Statutes use general language to

efficiently produce general coverage, not to invite *ad hoc* exceptions.[8] Ambiguity does not arise from a statute's failure to disavow inapplicable exceptions.

Livingston found ambiguity in the statute's use of the *indefinite* article "a" to refer to a class of search-triggering conduct (violations) and a class of searchable property (any belonging to the offender). According to ***Livingston***, the Legislature could have used the word "any," but did not. True. But ***Livingston*** provides no insight into how using "a," or refraining from "any," injects ambiguity into an if-then conditional sentence where "a" reasonably-believed violation triggers discretion to conduct "a" search. Ambiguity does not arise from the fact "a" at times denotes singular while "any" at times denotes plural, especially in a statute that addresses diverse behavior as *one class* of conduct (violations) and a search of an equally diverse class of property (any belonging to an offender). Generally:

> Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular[.]

RCW 1.12.050. When interpreting a related statute that also gives DOC authority to perform "a" regulatory task, Division I applied this Court's interpretation of indefinite articles like "a" to find:

> Use of "a," an indefinite article, rather than a definite article such as "the" indicates legislative intent that DOC conduct

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[8] Antonin Scalia & Brian A. Garner, Reading Law, 101 (2012) (*generalia verba sunt generaliter intelligenda*: general words are understood in a general sense).

> "at least" one risk assessment and does not limit DOC from conducting more than one risk assessment.

In re Personal Restraint of Adams, 132 Wn.App. 640, 648, 134 P.3d 1176 (2006) (citing ***State ex rel. Becker v. Wiley***, 16 Wn.2d 340, 352, 133 P.2d 507 (1943)); *see also* ***In re AJR***, 300 Mich.App. 597, 602, 834 N.W.2d 904 (2013) ("if the Legislature wants to refer to something particular, not general, it uses [] 'the,' rather than 'a' or 'an.'"); ***BP American Production Co., v. Madsen***, 53 P.3d 1088, 1091-92 (2002).

> The most natural interpretation of RCW 9.94A.631(1) is therefore:
>
> reason to believe the offender committed *at least one* violation triggers discretion to conduct *at least one* search of that offender's property.

Nothing in the statute's alternating use of "any" and "a" confounds reading "a" as meaning "at least one," for both deal with violations as one class of conduct. Legislatures may use synonyms in statutes that address discrete classes. *See* ***Tyler v. Cain***, 533 U.S. 656, 664, 121 S.Ct. 2478 (2001); *see also* ***State v. Ose***, 156 Wn.2d 140, 146-47, 124 P.3d 635 (2005) ("a" as "any [] one of a class"); ***Cook v. Carmen S.Pariso, Inc.***, 734 N.Y.S.2d 753, 757, 287 A.D.2d 208 (2001) ("no end of absurd [] constructions" would result from generally interpreting indefinite article "a" to mean "one and no more" instead of "at least one").

Expansive rather than restrictive intent is further signaled by the Legislature's use of the catch-all phrase "other personal property" to define the scope of searchable property, for it ensures no property belonging to

an offender will fall beyond the search authority. *See* ***Cockle v. Dept. of Labor and Indus.***, 142 Wn.2d 801, 808-09, 16 P.3d 583 (2001). The absence of ambiguity, let alone ambiguity pertaining to nexus, means the lower courts should not have imported new meaning into the statute from an extrinsic source they perceived to be useful legislative history.

ii. There is no support for adding a nexus test to RCW 9.94A.631(1) in its purpose, history or place within a scheme for reducing recidivism.

Courts should not look to legislative history if a statute's meaning is clear. ***Burton v. Lehman***, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005); ***C.J.C. v. Corp. of the Catholic Bishop***, 138 Wn.2d 699, 708, 985 P.2d 262 (1999). Plain meaning may be discerned from related provisions and the statutory scheme as a whole. ***State v. Ervin***, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Legislative history is only considered if ambiguity persists in spite of those more reliable markers of meaning. *Id.*

Jardinez prematurely leapt to legislative history, then ***Livingston*** followed. They should have looked to amendments, related provisions and the statute's place within a scheme devoted to combating recidivism. The first version was enacted in 1984.[9] A nexus test is conspicuously absent from the text.[10] As in subsequent amendments, the first version paired the

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[9] Laws of Wash. 1984 c 209 § 11 (formerly RCW 9.94A.195).

[10] NEW SECTION. Sec. 11. There is added to Chapter 9.94A RCW a new section to read as follows: [I]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a

discretion to search with authority to arrest for discovered crimes.[11] A 2009 amendment explicitly vested the discretion to search in CCOs. *Id.* No changes were made to the search provision in the 2012 amendment.

The Legislature's decision not to include a nexus test despite three opportunities to do so proves the restriction was never intended. *E.g.*, ***In re Personal Restraint of Quackenbush***, 142 Wn.2d 928, 935, 16 P.3d 638 (2001). An inference of satisfaction with the pre-***Jardinez*** reach of CCO search authority is further supported by the fact both amendments followed ***Conway***'s explicit failure to find a nexus test in the text. ***Conway***, 122 F.3d at 843. A second call to action would have come from Division II's reliance on ***Conway*** before the 2012 amendment. *See* ***Parris***, 163 Wn.App. at 122. It is presumed the Legislature was aware of how the text was being interpreted before each amendment. *See* ***Ervin***, 169 Wn.2d at 826. Acquiescence to the meaning ***Conway*** and ***Parris*** gave to the statute undermines the stock ***Jardinez*** put in 1984 SRA guideline commentary never adopted by the Legislature.

A recent addition to the scheme likewise advises against reading the statute restrictively. Pursuant to RCW 9.94A.718:

> Supervision of offenders—Peace officers [] authority to assist. [] (2) If a peace officer has reasonable cause to believe an offender is in violation of the terms of supervision, the [] officer may conduct a search as provided under RCW 9.94A.631, of the offender's person,

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search and seizure of the offender's person, residence, automobile, or other personal property. Substitute House Bill No. 1247.

[11] *Id.*; Laws of Wash. 2012 1st sp.s. c 6 § 1[11]; 2009 c 390 § 1.

> automobile, or other personal property to search for evidence of the violation.[12]

The Legislature is presumed to know courts treat its use of the indefinite article "a" differently than its use of the definite article "the." It is further presumed to know greater constitutional scrutiny is applied to searches by police "engaged in the often competitive enterprise of ferreting out crime," than to searches by CCOs, who serve a predominately supervisory role. ***State v. Reichert***, 158 Wn.App. 374, 387, 242 P.3d 44 (2010); ***State v. Simms***, 10 Wn.App.75, 85, 516 P.2d 1088 (1973)); ***Pennsylvania Bd. Of Probation and Parole v. Scott***, 524 U.S. 357, 368, 118 S.Ct. 2014 (1998).

The Legislature should be presumed to have used the definite article "the" in RCW 9.94A.718 to limit the authority of police to conduct warrantless regulatory searches. It follows the Legislature intended police to have less discretion to conduct regulatory searches than CCOs. *See* ***State v. Roggenkamp***, 153 Wn.2d 614, 625, 106 P.3d 196 (2005); ***Adams***, 132 Wn.App. at 648 (citing ***Wiley***, 16 Wn.2d at 352). If the same restriction was intended, enactment of RCW 9.94A.718 could have been paired with a replacement of RCW 9.94A.631(1)'s reaffirmed use of the indefinite article "a" with the definite article "the." Divergent intent for the two provisions should be inferred from the Legislature again retaining the indefinite article "a" in RCW 9.94A.631. Use of the definite article "the" in RCW 9.94A.718 shows the Legislature knows how to create a nexus

[12] RCW 9.94A.718 (Laws of Wash. 2016 c 234 § 1) (emphasis added).

requirement between a violation and search when one is desired. It makes sense the Legislature would vest more regulatory search authority in supervising CCOs than in police officers whose core function is to hold offenders accountable for crime, not rehabilitate them.

Still, RCW 9.94A.718 marks legislative intent to increase the law enforcement resources available to detect recidivism. The statute joins an expanding legislative scheme for protecting the public and rehabilitating offenders.[13] A scheme that has "explicitly and broadly given [DOC] power and responsibility to supervise offenders [] on various types of community custody." ***Dalluge***, 162 Wn.2d at 818. Other statutes expose DOC to liability when it fails in its responsibility to "take charge" of the offenders under its supervision. *E.g.* ***Binschus v. State***, 186 Wn.2d 573, 581-82, 380 P.3d 468 (2016); ***Joyce v. State, Dept. of Corr.***, 155 Wn.2d 306, 119 P.3d 825 (2016); ***Savage v. State***, 127 Wn.2d 434, 899 P.2d 1270 (1995); ***Taggart v. State***, 118 Wn.2d 195, 224, 822 P.2d 243 (1992).

This Court is "not unmindful of the extremely difficult supervisory tasks [CCOs] must perform." ***Taggart***, 118 Wn.2d at 224. Those already difficult tasks were made considerably more difficult by the nexus test ***Jardinez*** created. It confounds RCW 9.94A.631's regulatory purpose by increasing an offender's ability to conceal violations. No longer can CCOs address minor noncompliance, like reporting failures, through regulatory

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[13] *E.g.*, RCW 9.94A.010; .501 (assessments); .703 (conditions); .704 (supervision); .706 (firearm possession); .716 (arrest); .737 (sanctions).

searches that may reveal underlying problems predisposing the offender to major re-offense.[14] Since CCOs are primarily supervisors, not criminal investigators, they must now wait to preempt an offender's relapse into destructive habits until it becomes pronounced enough to support a reason to suspect proof of it is concealed in specific offender property. Increased recidivism is all but guaranteed:

> [B]y some estimates, the recidivism rate is well over 50 percent. [] Thus, one could argue that in almost any case, it is foreseeable that an inmate may commit another crime after release.[15]

After ***Jardinez***, the ability of CCOs to acquire critical awareness of how offenders are behaving too dangerously depends on offender confessions and third party reporting. The latter is far more likely to come from new victims of preventable crimes than people complicit in the noncompliance. ***Jardinez'*** restrictive vision of supervision defies the statute's purpose.

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[14] "The general rise in recidivism over the last 20 years is largely explained by the increasing underlying risk of the offender population. That is, on average, offenders sentenced to DOC today have a greater risk of recidivism than historically." WA State Institute for Pub. Pol., Washington's Offender Accountability Act: Final Report on Recidivism Outcomes, pg. 5 (Jan. 2010). ER 201(c).

[15] ***State v. Binschus***, 186 Wn.2d 573, 581, 380 P.3d 468 (2016).

iii. A resort to the legislative history and a careful reading of the commentary used to create the nexus rule reveals a lack of support for it in both.

Only if a statute remains ambiguous after review of its language, amendments and related provisions, will courts resort to legislative history to discern legislative intent. ***Ervin***, 169 Wn.2d at 820.

Jardinez looked to academic commentary, which provides:

> The search and seizure authorized by this section should relate to the violation which the Community Corrections Officer believes to have occurred.[16]

But our Legislature more straightforwardly described the provision as:

> [s]tat[ing] an offender may be required to submit to a search and seizure as a condition of sentence.[17]

The nexus test is as conspicuously absent from the Legislature's actual history as it is from the statute's text.

Jardinez also overstates the commentary it relied on as:

> demand[ing] a nexus between searched property and the alleged crime.

Jardinez, 184 Wn.App. at 529 (emphasis added). Far from demanding a nexus, recommending searches "relate[18] to" a violation could be fairly read

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[16] ***Jardinez,*** 184 Wn.App. at 529 (emphasis added) (quoting David Boerner, *Sentencing in Washington*: A Legal Analysis of the Sentencing Reform Act of 1981, at app. 1-13 (1985)).

[17] Legislative Digest and History of Bills of the Senate and House of Representatives, Forty-Eight Legislature, 484 (1983-84).

[18] "Relate[] "to show or establish a logical or causal connection between <seeks to ~ poverty and crime > [] to be in relationship: have reference[.]" Webster's Third New International Dictionary, 1147 (2002).

as advocating DOC refrain from resorting to its search authority unless it serves a supervisory concern raised by a violation. That reading would not preclude searches of offender property if an aberrant or recurring reporting failure, or other violation unconnected to identifiable offender property, is indicative of relapse. ***Jardinez'*** demand for independent investigations in these critical supervisory moments seems attributable to its inapt reliance on the ***Terry***-stop cases, which address investigatory approaches required when *police* interact with people whose privacy rights are not diminished by supervision. ***Jardinez***, 184 Wn.App. at 524, 529; ***Terry v. Ohio***, 392 U.S. 1, 88 S.Ct. 1868 (1968). ***Jardinez*** and ***Livingston*** were incorrectly decided, so they should be overruled.

b. Defendant's convictions should also be affirmed due to the nexus between his condition to obey all laws and illegal flight from his car at the time of arrest.

The Court of Appeals in defendant's case correctly recognized his convictions are not effected by ***Jardinez***. This is because he was obliged to obey all laws pursuant to his supervision and violated that condition by fleeing from *his car* to avoid arrest for a DOC warrant he had reason to believe would trigger a search of that car. St.Resp.Br. at 20-22. That conduct gave CCO Grabski reason to suspect the car was connected to at least one of defendant's violations. Suspicion informed by the drug cases

underlying defendant's supervision and his presence outside a house known for drug dealing not long before his arrest.

D. CONCLUSION.

Defendant's convictions should be affirmed. The nonconstitutional error he claims as a basis to suppress proof of his recidivist drug dealing was not preserved for review. His claim fairs no better on the merits as the cases he relies on were wrongly decided and inapplicable to his case.

RESPECTFULLY SUBMITTED: June 1, 2017

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Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

6/1/17 _____
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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